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CITATIONS

784119—48

In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 682

WARREN J. HARANG, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court, its findings of fact and conclusions of law (R. 75–82) are reported at 68 F. Supp. 227. The opinion of the Circuit Court of Appeals (R. 86–95) is reported at 165 F. 2d 106.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on December 30, 1947 (R. 95), and a petition for rehearing was denied on February 11, 1948 (R. 101). The petition for a writ of certiorari was filed on March 19, 1948. The juris-

diction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the Circuit Court of Appeals erred in holding that under Louisiana law oil royalties from the husband's separate property remain separate property and are taxable as his income under Section 22 (a) of the applicable Revenue Acts and of the Internal Revenue Code.

STATUTES INVOLVED

The applicable provisions of the statutes involved are set forth in the Appendix, *infra*, pp. 7–11.

STATEMENT

The facts in this case were stipulated by the parties (R. 43–74) and were found by the District Court in conformity with the stipulation (R. 76–77). The pertinent facts may be summarized as follows:

The taxpayer resides in Louisiana and, during the tax years involved, was married. There existed between the taxpayer and his wife a community of acquets and gains. The taxpayer owned, as his separate property, an undivided one-fourth interest in certain oil producing land in Louisiana, a one-eighth interest being inherited from his father and a one-eighth interest being acquired by donation from his mother. During

the taxable years in question the taxpayer received certain royalties and overriding royalties on account of his interest in the property. (R. 76.)

Treating these royalties as income belonging to the community, the taxpayer reported in his income tax returns only one-half of the amounts which were received. The Commissioner determined deficiencies in income taxes for the years 1937 through 1940 on the ground that the royalties were the separate property of the taxpayer and should have been included in their entirety in his taxable income. The taxpayer paid the deficiencies and, claims for refund having been filed with and rejected by the Commissioner, instituted suit to recover the taxes which were allegedly overpaid. (R. 77.) The District Court concluded that the royalties constituted income belonging to the community, only one-half of which was required to be included in the taxpayer's taxable income, and ordered that the taxpayer recover the amount of taxes which had been overpaid. (R. 75–83.)

The Circuit Court of Appeals reversed, holding that Louisiana law did regard oil royalties derived from the separate property of the husband as being his separate property and, accordingly, ruled that they are taxable in their entirety to him under the federal taxing statutes. (R. 86–95.)

ARGUMENT

The only issue before the Circuit Court of Appeals involved an interpretation of Louisiana law, namely, whether oil royalties received by the taxpayer from his separately owned property constituted income belonging to him or belonging to the community of acquets and gains existing between him and his wife. After a full examination and analysis of the Louisiana authorities, the court below concluded that, under the law of that State, such oil royalties remain the separate property of the husband when derived from his separately owned property. Since there is no clear demonstration that the law of Louisiana was misinterpreted (Pet. 7–10; Br. 2–5), the decision below should not be disturbed (*Helvering* v. *Stuart,* 317 U. S. 154); no adequate basis for the granting of the petition has been asserted with respect to this issue.

To the extent that the petition for a writ of certiorari (Pet. 4–10; Br. 4–22) has been framed on the assumption that there is a fundamental conflict between the decision below and the cases which uniformly hold that oil royalties are taxable as ordinary income rather than as proceeds from the sale of a capital asset (*Burnet* v. *Harmel,* 287 U. S. 103), the contention is without foundation. While the federal taxing statute, in some instances, looks to local law to determine the owner of the income to whom it is to be taxed

(*Poe* v. *Seaborn,* 282 U. S. 101; *Bender* v. *Pfaff,* 282 U. S. 127), the character of the income as being capital gain or ordinary income is a matter to be resolved solely under the criteria of the federal taxing statute which was intended to have a uniform application throughout the country (*Burnet* v. *Harmel, supra;* cf. *Palmer* v. *Bender,* 287 U. S. 551). For purposes of its community property law or for every other purpose, Louisiana is free to regard the receipt of oil royalties as being the proceeds from the sale of oil. This determines the ownership of the royalties as being the separate property of the husband or wife, and may indicate the person to whom they are taxable under the federal taxing statute; it does not have any effect on defining the character of the royalties as constituting ordinary income or capital gain for federal tax purposes. Similarly, the fact that oil royalties are taxed as ordinary income under the federal taxing statute cannot, contrary to the taxpayer's underlying assumptions (Pet. 4–10; Br. 4–22), require the State of Louisiana to regard them in a similar manner so as to make them fall into the community, nor change the law of that State which views them as proceeds from the sale of property and as belonging to the spouse from whose property they are derived. The rulings of the court below are completely harmonious on this point. *Commissioner* v. *Gray,* 159 F. 2d 834; *Commissioner* v. *Wilson,* 76 F. 2d

766; *Turbeville* v. *Commissioner,* 84 F. 2d 307, certiorari denied, 299 U. S. 581. There is no conflict with the decisions of this Court or of any other Circuit Court of Appeals.

CONCLUSION

The only question that emerges in this case is one of local law which was decided correctly by the court below. There is no conflict in decisions, and no question regarding the proper interpretation of the taxing statute is raised which has not already been decided by this Court. For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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APRIL 1948.

APPENDIX

INTERNAL REVENUE CODE

SEC. 22. GROSS INCOME.

(a) *General definition.*—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service * * *, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. * * * [26 U. S. C. 1940 ed., Sec. 22.]

The provisions of Section 22 (a) of the Revenue Acts of 1936, c. 690, 49 Stat. 1648, and 1938, c. 289, 52 Stat. 447, are identical with the quoted provisions of Section 22 (a) of the Internal Revenue Code.

LOUISIANA CIVIL CODE (DART, SECOND ED.)

VOL. 1

ART. 533. *Usufruct defined.*—Usufruct is the right of enjoying a thing, the property of which is vested in another, and to draw from the same all the profit, utility and advantages which it may produce, provided it be without altering the substance of the thing.

The obligation of not altering the substance of the thing takes place only in the case of perfect usufruct.

Art. 544. ***Fruits—Ownership.***—All kinds of fruits, natural, cultivated or civil, produced, during the existence of the usufruct, by the things subject to it, belong to the usufructuary.

Art. 545. *Kinds of fruits defined.*—Natural fruits are such as are the spontaneous product of the earth; the product and increase of cattle are likewise natural fruits.

The fruits, which result from industry bestowed on a piece of ground, are those which are obtained by cultivation.

Civil fruits are rents of real property, the interest of money, and annuities.

All other kinds of revenue or income derived from property by the operation of the law or private agreement, are civil fruits.

Art. 546. *Natural or cultivated fruits—Ownership.*—The natural fruits, or such as are the product of industry, hanging by branches or by roots at the time when the usufruct is open, belong to the usufructuary.

Fruits in the same state, at the moment when the usufruct is at an end, belong to the owner, without being obliged to compensate the other, for either work or seeds.

Art. 547. *Civil fruits—Ownership.*—Rents and income of property, interest of money, and annuities, and other civil fruits, are supposed to be obtained day by day, and they belong to the usufructuary, in proportion to the duration of his usufruct, and are due to him, though they may not be collected at the expiration of his usufruct.

VOL. 2

ART. 2334. ***Separate and common property of spouses.***—The property of married persons is divided into separate and common property.

Separate property is that which either party brings into the marriage, or acquires during the marriage with separate funds, or by inheritance, or by donation made to him or her particularly.

The earnings of the wife when living separate and apart from her husband although not separated by judgment of court, her earnings when carrying on a business, trade, occupation or industry separate from her husband, actions for damages resulting from offenses and quasi offenses and the property purchased with all funds thus derived, are her separate property.

Actions for damages resulting from offenses and quasi offenses suffered by the husband, living separate and apart from his wife, by reason of fault on her part, sufficient for separation or divorce shall be his separate property.

Common property is that which is acquired by the husband and wife during marriage, in any manner different from that above declared. But when the title to community property stands in the name of the wife, it can not be mortgaged or sold by the husband without her written authority or consent.

ART. 2386. ***Fruits of paraphernal property—Ownership—Reservation by wife.***—When the paraphernal property is administered by the husband, or by him and the wife indifferently, the fruits of this property, whether natural, civil,

or the result of labor, belong to the conjugal partnership, if there exists a community of gains. If there do not, each party enjoys, as he chooses, that which comes to his hands; but the fruits and revenues which are existing at the dissolution of the marriage, belong to the owner of the thing which produce them. [As amended, Acts 1871, No. 87.]

ART. 2399. *Community of acquets and gains—Stipulation against required.*—Every marriage contracted in this State, superinduces of right partnership or community of acquets or gains, if there be no stipulation to the contrary.

ART. 2402. *Property forming community—Personal injuries to wife.*—This partnership or community consists of the profits of all the effects of which the husband has the administration and enjoyment, either of right or in fact, of the produce of the reciprocal industry and labor of both husband and wife, and of the estate which they may acquire during the marriage, either by donations made jointly to them both, or by purchase, or in any other similar way, even although the purchase be only in the name of one of the two and not of both, because in that case the period of time when the purchase is made is alone attended to, and not the person who made the purchase. But damages resulting from personal injuries to the wife shall not form part of this community,

but shall always be and remain the separate property of the wife and recoverable by herself alone; "provided where the injuries sustained by the wife result in her death, the right to recover damages shall be as now provided for by existing laws."

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